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Attorneys for Petitioner Lucky Credit Company LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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| <p>LUCKY CREDIT COMPANY, LLC</p> <p style="padding-left: 40px;">Petitioner, a Nevada Limited Company,</p> <p style="text-align: center;">v.</p> <p>UNITED STATES OF AMERICA,</p> <p style="padding-left: 40px;">Respondent.</p> | <p>PETITION TO QUASH IRS THIRD- PARTY SUMMONS SERVED UPON NEVADA STATE BANK</p> <p>Case No.: _____</p> <p>Honorable _____</p> <p style="text-align: center;">(filed electronically)</p> |
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Petitioner Lucky Credit Company LLC (“**Petitioner**”) by and through its undersigned counsel, hereby petitions the United States District Court for the District of Utah to quash the

unlawful and over-broad administrative summons issued by the Internal Revenue Service upon Nevada State Bank and which is a bank where Petitioner conducts its banking business. In support of the Petition, Petitioner states and represents as follows:

PARTIES, JURISDICTION AND VENUE

1. Petitioner Lucky Credit Company LLC is a Nevada Limited Liability Company with its principal place of business at 245 North University Avenue, Provo, Utah, 84601.

2. Respondent is the United States of America, for and on behalf of the Internal Revenue Service of the Department of the Treasury (“**IRS**”).

3. Nevada State Bank, the summoned third-party (“**NSB**”), is an affiliate of Zions First National Bank which is headquartered in Salt Lake City, State of Utah and which has at least one office in Utah where legal work is performed for the Bank.

4. The summons at issue in this proceeding (the “**Summons**”) was directed to the Legal Services Division of NSB which is located at 255 North Admiral Byrd Blvd., Salt Lake City, Utah 84116.

5. This proceeding is brought pursuant to 26 U.S.C. §7609(b)(2) and the United States District Court for the District of Utah has original federal subject matter jurisdiction over this proceeding, pursuant to 26 U.S.C. §§ 7609(b)(2)(B), (h)(1) and 28 U.S.C. § 1345-46 and because the United States is a party to the proceeding.

6. Because NSB is found in the State of Utah and because the Summons was directed by the IRS to the Legal Services Division of NSB located at 255 North Admiral Byrd Blvd., Salt Lake City, Utah 84116, venue is proper in the United District Court for the District of Utah, Central Division pursuant to 26 U.S.C. § 7609(b), (h) and/or 28 U.S.C. § 1402.

ALLEGATIONS

7. On or about September 21, 2009, IRS Revenue Agent Loretta Miller caused the administrative IRS summons, dated September 21, 2009, to be mailed and/or served on NSB.

8. The Summons was purportedly served pursuant to authority granted by Congress under 26 U.S.C. § 7602(a).

9. A copy of the challenged Summons is attached as Exhibit A and incorporated herein by reference.

10. The Summons directs NSB to appear and “give testimony and to bring with you and to produce for examination the following books, records, papers, and other data relating to the tax liability or for the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the periods shown.” (*Id.*)

11. The “person identified above” on the Summons is “Lucky Champ Inc.” (*Id.*)

12. The periods shown on the Summons are “January 1, 2005 and ending December 31, 2007.” (*Id.*)

13. The items requested on the Summons are:

all books, papers, records, and other data concerning all accounts in which [Lucky Champ Inc.] **and/or Charleston Champ and/or Lucky Credit Company LLC and/or Lucky Investors Inc. and/or Lucky Champ** is identified as having any ownership interests, signatory privileges, rights to make withdrawals, or for which [Lucky Champ Inc.] **and/or Charleston Champ and/or Lucky Credit Company LLC and/or Lucky Investors Inc. and/or Lucky Champ** is shown as the trustee, co-signer, guardian, custodian, or beneficiary. This request for records includes, but is not limited to:

1. **CHECKING ACCOUNT RECORDS**

2. **SAVINGS ACCOUNT RECORDS**

(*Id.*) (Tax Identification Numbers omitted) (all emphasis in original).

14. Petitioner is not owned or controlled, in whole or in part, by the target of the investigation, Lucky Champ Inc., or Lucky Champ Inc.'s owners.

15. Likewise, Lucky Champ Inc. is not owned or controlled, in whole or in part, by Lucky Credit or Lucky Credit's owners.

16. During an unrelated audit of the records of Lucky Credit's owner, all of Lucky Credit's bank records that were requested by the IRS were given to the IRS.

17. The records currently summoned from NSB by the IRS consist of confidential and proprietary financial information belonging to Lucky Credit.

18. The records summoned by the IRS do not relate to Lucky Champ Inc.'s business operation and are overly broad and cumbersome.

19. The records summoned by the IRS are not relevant or germane to the IRS's investigation of Lucky Champ Inc. or its owner.

20. To be lawful the breadth of the Summons must comply with the criteria set forth by the United States Supreme Court in *Powell v. United States*, 379 U.S. 48 (1964); to wit: that the summoned materials, insofar as they relate to Lucky Credit, must be (a) relevant to an investigation of Lucky Champ, Inc., and (b) not already in the possession of the IRS.

21. Petitioner alleges that the Summons fails under the requirements under *Powell* because the summoned materials and testimony, insofar as they relate to Lucky Credit, are

(a) not relevant to an investigation of Lucky Champ Inc., and (b) largely already in the possession of the IRS.

22. Because the Summons does not relate to Lucky Credit or the owner of Lucky Credit, the Summons constitutes an unlawful search of Petitioner's confidential and financial records.

23. Because the Summons does not relate to Lucky Credit or the owner of Lucky Credit, the Summons is being used for research or some other statutorily unauthorized purpose.

24. Petitioner contends that for one or more of the foregoing reasons, the Summons served upon NSB should be quashed by the Court.

25. Contemporaneously with the filing of this Petition, Petitioner has caused copies of this Petition to be mailed by certified mail to NSB and to the IRS employee and office identified in the Summons.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Petitioner Lucky Credit Company LLC, by and through its counsel, respectfully prays the Court for a final order or judgment as follows:

1. For a final order or judgment establishing that the United States District Court for the District of Utah has jurisdiction over this Petition and that venue is proper in this Court, or in the alternative, for a final order or judgment transferring this proceeding to a District that has subject matter jurisdiction over Petitioner's Petition for relief;

2. For an order quashing all or part of the Summons issued by the IRS upon NSB which seeks discovery of confidential and proprietary records from Petitioner's Bank, NSB; and
3. For such further legal and equitable relief as may be just in the premises.

DATED this 13th day of October 2009.

RAY QUINNEY & NEBEKER P.C.

/s/ Steven W. Call
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Attorneys for Petitioner Lucky Credit Company LLC

CERTIFICATE OF SERVICE

On this 13th day of October 2009 I hereby certify that I served the foregoing **PETITION
TO QUASH IRS THIRD- PARTY SUMMONS SERVED UPON NEVADA STATE BANK**

by Certified First Class United States Mail, postage prepaid to the following:

Nevada State Bank
Attention: Legal Services
255 N. Admiral Byrd Blvd.,
Salt Lake City, UT 84116

(Mail - Certified Mail, Return Receipt)

Internal Revenue Service
Attn: Loretta Miller
110 City Parkway
MS 4407LM
Las Vegas, NV 89106

(Mail - Certified Mail, Return Receipt)

Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

(Mail - Certified Mail, Return Receipt)

United States Attorney's Office
Brett Tolman, Esq.
Attn: Civil Process Clerk
185 South State Street
Salt Lake City, Utah 84111

(Mail - Certified Mail; Return Receipt)

Office of the Attorney General
U.S. Department of Justice
Tax Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

(Mail - Certified Mail; Return Receipt)

/s/ Carrie A. Watters

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